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IN THE
Supreme Court of the United States

GEORGE W. GREEN, PETITIONER,
VS.

JOHN W. HOLLAND, AS UNITED STATES DISTRICT
JUDGE FOR SOUTHERN DISTRICT OF
FLORIDA, RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI AND BRIEF
IN SUPPORT THEREOF.**

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PETITION FOR CERTIORARI.

To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:

Your Petitioner, a resident and citizen of Reading,
State of Pennsylvania, prays this court for the issuance
of a writ of certiorari to the Circuit Court of Appeals
for the Fifth Circuit to review a final judgment of said
Court refusing to issue an order against the United States
District Judge for the Southern District of Florida to
show cause why he refuses to enter judgment as re-
quired by its unrecalled mandate ordering him so to do,
said final judgment of refusal being entered on October
19, 1940.

STATEMENT OF MATTER INVOLVED.

Your petitioner originally instituted his suit in the United States District Court for Southern District of Florida, on negotiable notes, promissory notes under seal made by the City of Stuart, State of Florida, a municipal corporation, endorsed in blank and payable to bearer, and before your petitioner took said notes and when the same were not in default, the City of Stuart, then its duly authorized agents and officials, made a direct promise to your petitioner, a nonresident of Florida, to pay said notes and in consideration of said promise, your petitioner released a corporate debtor from an obligation it owed him, all of which will more fully appear from the record in the case of *George W. Green v. City of Stuart*, 81 F. 2d 968, Case No. 7695.

That the defendant in said cause made a motion for a directed verdict at the trial thereof and said motion was granted and thereby the defendant took said case from the jury and waived its right to a jury trial and thereby consented to the entry of final judgment against it should said case be reversed on appeal.

That said judgment was appealed and reversed and the court passed on all the questions involved, and announced its decision, whereupon the defendant petitioned for a rehearing and said petition was denied and said Circuit Court thereon sent down its mandate to the District Court and published its opinion, and the term passed and said mandate was never recalled and today lies in the files of said United States District Court for the Southern District of Florida.

That after said mandate came down, petitioner moved the District Court to enter final judgment according to said mandate and regardless of its waiver of right to ob-

ject by moving for a directed verdict, the defendant, City of Stuart, filed written objections to the entry of said judgment and filed a demurrer, and for the first time sought to question the jurisdiction of the Federal Court over the parties to said cause.

That the said District Court could not entertain such a suggestion, as its appellate court had already passed on its jurisdiction and found it had it, and wrote and published its opinion and denied and overruled said demurrer and entered judgment for the plaintiff.

Thereupon, the defendant appealed from said judgment on the ground the said District Court was without jurisdiction to enter same and the Circuit Court of Appeals for the Fifth Circuit allowed said appeal and thereupon reversed and attempted to set aside its own final judgment at another term, reversed the District Judge for doing what it had, by its unrecalled mandate, ordered him to do and at a time when it had no jurisdiction of the parties of the subject matter, as will more fully appear in 91 F. 2d 603, 113 A. L. R. 561.

That your petitioner prayed this court for a writ of certiorari in order that this court might pass on the novel method of procedure and contrary to Title 28, Section 347, United States Code, that made the first final and unrecalled or unreversed judgment of that court final; that said petition was denied and upon the coming down of the second mandate, the District Court vacated and set aside its final judgment and assessed the costs against your petitioner.

Thereupon, petitioner again appealed to the said Circuit Court of Appeals on the grounds the lower court had no jurisdiction to set aside said judgment or assess costs against your petitioner, but said appeal was denied as will appear in 101 F. 2d 309.

REASON FOR GRANTING WRIT.

Petitioner shows that by reason of the method of pleading in this cause and because the defendant did not have this Court by certiorari review the said first final judgment of said Circuit Court of Appeals and if incorrect, reverse same:

(1) Petitioner has been effectually deprived of his property in said notes.

(2) The Circuit Court of Appeals has disregarded or ignored Title 28, Section 347, United States Code, making its first judgment final.

(3) Because with said unrecalled mandate lying in the United States District Court, petitioner cannot sue and recover in any other court because a plea of former recovery can be proved and defeat his action.

That in consideration of the petitioner's situation and because by a novel method of legal manipulation, he was deprived of his property through the defendant's neglect or failure to ask for and obtain certiorari and have this court review said first decision and the failure of the Circuit Court of Appeals to observe the law and rule that its first judgment was final and could only be reversed by this court by writ of certiorari and not by the court that rendered it at another term and without control of its mandate.

The petitioner asked the court to enter judgment on the first mandate and disregard the later decisions of the Circuit Court of Appeals made at a time when it had lost jurisdiction to rule and showed the court that with the first mandate unrecalled and not reversed by any court with jurisdiction to do so, it was made impossible for petitioner to sue in any court and overcome a plea of former recovery and hence, unless judgment were

entered on said mandate, the petitioner would be deprived of his property, all because the defendant did not take a writ of certiorari from said final judgment.

That said District Court refused to enter said judgment and thereupon petitioner applied to the Circuit Court of Appeals for an order against said District Judge to enter a judgment on said mandate or show cause why he refused so to do and the Circuit Court refused to enter said order, but denied your orator's petition.

Petitioner, having no other remedy, applies to this court for certiorari, to review the record and proceedings in said cause because this method of procedure is unlawful and contrary to the rules and opens the way to destroy any value the Federal courts have as a forum to try such cases, and shows the Court in truth and fact he has been deprived of due process of law and his suit dismissed at the suggestion of the defendant at a time when he could not rebut and by a court that had lost jurisdiction to enter any valid order, and in so doing, the Circuit Court of Appeals decided a federal question:

- (1) Contrary to Title 28, Section 347, United States Code.
- (2) Contrary to all authority.
- (3) Contrary to the applicable decisions of the Supreme Court.
- (4) And has so far departed from the accepted procedure in an important matter affecting procedure generally throughout the country, as to call for the exercise of supervision by the Supreme Court.

And your petitioner respectfully prays a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and send up to this Court for its review and

determination, on a day certain to be therein named, such part of the transcript and record in this case as it has not heretofore certified to this court and that the judgments of the Circuit Court of Appeals and the United States District Court for the Southern District of Florida entered after the United States Court had lost jurisdiction of this cause be declared null and void and the first final judgment of the United States Circuit Court of Appeals and the judgment of the trial court entered on said mandate be declared in full force and effect, and your petitioner have such other and further relief in the premises as to this Honorable Court may see meet and just.

This the 20th day of November, A. D. 1940.

MANLEY P. CALDWELL,
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Attorney for Petitioner.

